

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10696 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

MAHAMMAD AYAZ NISAR

MAHAMMAD SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10696 of 2003
MR AR SHAIKH for Petitioner No. 1
MR RM CHAUHAN Ld. AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Surat city on

18.6.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was declared as 'bootlegger'.

The grounds served upon the petitioner and placed on record reveal that the detaining authority took into consideration two offences registered against the petitioner on 25.3.2003 and 27.3.2003 under sec. 66(1)(B), 65(E) and 81 of the Bombay Prohibition Act, whereby it is alleged that the petitioner was found in possession of some quantity of foreign liquor. In addition to this, the detaining authority also relied upon two in-camera statements recorded by the sponsoring authority on 10.6.2003 as verified by the detaining authority on 11.6.2003 revealing the incidents of 13.4.2003 and 25.5.2003 unreported to the police. From the above material, the order impugned came to be passed by the detaining authority.

Ld. advocate Ms. Banna Datta for Mr. AR Shaikh for the petitioner and ld. AGP Mr. Chauhan for the respondents were heard at length. The affidavit filed on behalf of the respondents as placed on record is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, from the rival contentions, this matter can be disposed of on the ground whether the further detention of the petitioner becomes bad in law on account of the passing the order of detention with delay. To evaluate this contention, the chronology of events as relied upon by the detaining authority is required to be perused. The last offence against the petitioner came to be registered on 30.3.2003, thereafter, the sponsoring authority recorded the statements in-camera only on 10.6.2003, which in turn, revealed the incidents occurred on 13.4.2003 and 25.5.2003. These statements were verified by the detaining authority on 16.6.2003 and on 18.6.2003, the order came to be passed. If the last date of registration of offence against the petitioner is taken into consideration, the passing of the order is delayed by about two and half months. In between, on 10.6.2003 and 11.3.2003 in-camera statements have been recorded revealing the earlier incidents as above said unreported to the police, however, from the last date of the registration of the offence, these statements could be recorded only as aforesaid on 10.6.2003 and 11.6.2003. This itself is a delay in process of passing the order. Therefore, the fact of this case is squarely covered by a

decision of this court in the matter of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad city and ors., as reported in 1997(1) GLH p. 381. This court in para-21 of the said judgment observed as under:

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 3rd October and 10th October 1996, but unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Rammurthy reported in 1993(2) Suppli. SCC 61."

The order in question, therefore, is required to be quashed and set aside on this ground because the live link between the alleged activity of the petitioner and passing of the order is snapped by the lapse of time. The order impugned is required to be set aside only on that ground.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 18.6.2003 by the Police Commissioner, Surat city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose.

Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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